CITIZENSHIP & NATIONALITY

N.B.: Although the terms nationality and citizenship technically have two distinct meanings, international human rights courts and advocates at times use the two terms interchangeably.

Contents

OVERVIEW

The right to a nationality is of paramount importance to the realization of other fundamental human rights. Possession of a nationality carries with it the diplomatic protection of the country of nationality and is also often a legal or practical requirement for the exercise of fundamental rights. Consequently, the right to a nationality has been described as the “right to have rights.” *See* Trop v. Dulles, 356 U.S. 86, 101–02 (1958). Individuals

who lack a nationality or an effective citizenship are therefore among the world's most vulnerable to human rights violations.

In recognition of the importance of having a nationality, a number of regional and international human rights instruments include the right to a nationality. **Article 15** of the Universal Declaration of Human Rights states that "[e]veryone has the right to a nationality" and that "[n]o one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality." *See also* American Convention on Human Rights, **art. 20**. The right to a nationality is often articulated through protection of the rights of children and the principle of non-discrimination. For example, **Article 7** of the Convention on the Rights of the Child states that every child has the right to acquire a nationality, while **Article 5** of the Convention on the Elimination of All Forms of Racial Discrimination requires States to "prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the

law, notably in the enjoyment of the following rights . . . the right to nationality."

Despite recognition of the right to a nationality, there are currently at least **10 million people** who do not have a nationality and are therefore stateless. *See* UNHCR, Ending Statelessness. While statelessness is a global problem, it is particularly prevalent in South East Asia, Central Asia, Eastern Europe, the Middle East, and several countries in Africa. *See* UNHCR & Asylum Aid, *Mapping Statelessness in the United Kingdom* (2011), at 22. Estimates show that the countries with the greatest number of stateless persons residing within their borders are Cote d'Ivoire, Estonia, Kuwait, Latvia, Myanmar, Russia, Syria, Thailand, and Uzbekistan. *See* UNHCR, *Global Trends: Forced Displacement in 2016* (2017), at 60-63.

The 1954 Convention relating to the Status of Stateless Persons (1954 Statelessness Convention) was drafted in order to guarantee the protection of these individuals' fundamental

rights. **Article 1(1)** of the 1954 Statelessness Convention defines a stateless person as **"a person who is not recognized as a national by any State under the operation of its law."** This definition has subsequently become a part of customary international law. *See* UNHCR, *Expert Meeting – The Concept of Stateless Persons Under International Law (Summary Conclusions)* (2010), at 2 (commonly referred to as the UNHCR Prato Summary Conclusions).

The 1954 Statelessness Convention is similar in structure to the 1951 Convention Relating to the Status of Refugees. This is because the 1954 Statelessness Convention was originally intended to be a Protocol to the 1951 Refugee Convention. *See, e.g.,* Equal Rights Trust, *The Protection of Stateless Persons in Detention under International Law* (Working Paper 2009), at 19. It is not surprising, therefore, that the 1954 Statelessness Convention addresses the same rights as those covered in the 1951 Refugee Convention, with a few distinctions. The 1954 Statelessness Convention applies some of the same exclusion clauses as those found in the 1951

Refugee Convention. For example, the 1954 Statelessness Convention does not apply "to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance so long as they are receiving such protection or assistance." *See* 1954 Statelessness Convention, art. 1(2)(i).

The 1954 Statelessness Convention also recognizes the **rights of stateless persons** to education, housing, access to the courts, employment, and public relief, among other rights. In some cases, such as in access to the courts and access to public relief and primary education, stateless persons are to be treated in the same way as nationals. *See id.* at arts. 16, 22-23. In other areas, including wage-earning employment and housing, stateless persons are to be given the same treatment as non-citizens in the same circumstances. *See id.* at arts. 17, 21. Recognizing that many stateless persons lack documentation, **Article 27** requires States to issue identity documents to stateless persons on their territory, while **Article**

28 obliges States to issue travel documents to stateless persons unless there are compelling reasons such as national security or public order for not doing so. *See id.* at arts. 27-28.

A major limitation of the 1954 Statelessness Convention, and where it departs significantly from the 1951 Refugee Convention, is the protection afforded in **Article 31**. **Article 31** prohibits the expulsion of stateless persons lawfully in the territory of a State party save for grounds of national security or public order. *See id.* at art. 31(1). **Article 31** also requires that the expulsion of stateless persons on these grounds be "in pursuance of a decision reached in accordance with due process of law." *See id.* at art. 31(2). The issue with **Article 31** is that it limits its protection to stateless persons *lawfully* on the State's territory. Because many stateless persons lack identity and travel documents, they have no means of gaining lawful entry into a State and thus are ineligible for protection from expulsion. This is in sharp contrast to Article 31 of the 1951 Refugee Convention, which recognizes the difficulties refugees often face in acquiring valid travel documents and prohibits

States from penalizing refugees who enter their territories illegally. *See* 1951 Refugee Convention, art. 31(1).

Article 32 of the 1954 Statelessness Convention requires States to "as far as possible facilitate the assimilation and naturalization of stateless persons." More detailed provisions for the acquisition of nationality as well as the prevention of statelessness in the first place are found in the 1961 Convention on the Reduction of Statelessness (1961 Statelessness Convention). **Article 1(2)** of the 1961 Statelessness Convention describes the conditions a State may place on granting nationality and stipulates that a State may require a period of habitual residence but it may not exceed five years. The 1961 Statelessness Convention also provides that children should acquire the nationality of the State in which they are born if they would otherwise be stateless and that a State may not deprive an individual of their nationality if doing so

would render the individual stateless. *See* 1961 Statelessness Convention, arts. 1, 8.

Nationality can be a contentious issue, however, as the acquisition and deprivation of nationality implicates other areas of the law including a State's sovereign right to determine who may enter and remain within its territory. Consequently neither the 1954 nor the 1961 Statelessness Conventions are widely ratified and a large number of States have domestic laws that deprive individuals of access to a nationality on a discriminatory basis and/or do not adequately protect the human rights of stateless persons on their territory.

Legal Protections

The following instruments address the right to a nationality:

- 1951 Convention Relating to the Status of Refugees and 1967 Optional Protocol Relating to the Status of Refugees
- 1954 Convention Relating to the Status of Stateless Persons
- 1961 Convention on the Reduction of Statelessness
- 1997 European Convention on Nationality
- African Charter on the Rights and Welfare of the Child (art. 6)
- American Convention on Human Rights (art. 20)
- American Declaration of the Rights and Duties of Man (art. 19)
- Arab Charter on Human Rights (art. 24)
- Convention on the Elimination of All Forms of Discrimination against Women (art. 9)
- Convention on the Elimination of All Forms of Racial Discrimination (art. 5(d)(iii))
- Convention on the Rights of Persons with Disabilities (art. 18)
- Convention on the Rights of the Child (arts. 7 and 8)
- Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession
- International Covenant on Civil and Political Rights (art. 24(3))
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) (art. 6(g) and (h))

- Universal Declaration of Human Rights (art. 15)

Acquisition of Nationality

Nationality can be acquired in one of three ways: by birth on a State's territory (*jus soli*), by descent from a State's national (*jus sanguinis*), or by naturalization. The citizenship laws of each State dictate whether the State applies *jus soli* or *jus sanguinis* and explain the requirements for naturalization. In States that apply pure *jus soli*, an individual acquires the citizenship of that State by being born on the State's territory, regardless of the citizenship or immigration status of the individual's parents. *See, e.g.,* 8 U.S.C. § 1401. In other States, such as the United Kingdom, an individual acquires citizenship by birth on the territory, provided that the individual's parents were "legally settled" in the United Kingdom at the time of the individual's birth. *See* British Nationality Act, 1981 c. 61, § 1 (United Kingdom). In States that apply *jus sanguinis*, it does not matter

where an individual is born; if at least one of the individual's parents is a citizen of the country, citizenship will pass from the parent to the child. *See* Act of 15 February 1962 on Polish Citizenship, § 2 (Poland). A number of States, however, provide that only the father may pass his nationality on to his children. (See **Causes of Statelessness** below.) Finally, States such as the United States, apply both *jus soli* and *jus sanguinis* – that is, children born on U.S. territory are automatically U.S. citizens, as are children born abroad to U.S. citizen parents. *See* 8 U.S.C. § 1401.

De Jure vs. De Facto Statelessness

The definition of a stateless person provided in the 1954 Statelessness Convention – "a person who is not considered a national by any State under operation of its law" – describes the situation of the *de jure* stateless. *See* 1954 Statelessness Convention, art. 1(1). Thus, the obligations imposed on States

by the 1954 Statelessness Convention apply only to *de jure* stateless persons, although the Final Act included a non-binding recommendation that States take measures to protect the rights of *de facto* stateless persons. *See* UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, *Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons*, 25 July 1951, A/CONF.2/108/Rev.1.

There has been much debate within the international community concerning the definition of *de facto* statelessness. A generally applied definition of a *de facto* stateless person has been "a person unable to demonstrate that he/she is *de jure* stateless, yet he/she has no effective nationality and does not enjoy national protection." *See, e.g.,* Gábor Gyulai, Hungarian Helsinki Committee, *Forgotten Without Reason: Protection of Non-Refugee Stateless Persons in Central Europe* (2007), at 8. Thus, *de facto* stateless persons technically have a nationality,

but for a variety of reasons do not enjoy the rights and protections that persons holding their nationality normally enjoy.

The debate regarding this definition has surrounded the ambiguity of the term “effective nationality.” Traditionally, the divide has been over whether a person’s nationality could be ineffective inside as well as outside the individual’s country of nationality. This debate unfolded during the 2010 UNHCR Expert Meeting on the Concept of Statelessness under International Law, where participants ultimately concluded that the term “*de facto* statelessness” should refer to persons “outside the country of their nationality who are unable or, for valid reasons, are unwilling to avail themselves of the protection of that country.” *See* UNHCR, *Expert Meeting – The Concept of Stateless Persons Under International Law (Summary Conclusions)* (2010), at 6.

In the above context, “protection” refers to “the right of diplomatic protection exercised by a State of nationality in order

to remedy an internationally wrongful act against one of its nationals, as well as diplomatic and consular protection and assistance generally, including in relation to return to the State of nationality." *See id.* A person's inability or unwillingness to seek the protection of the country of that individual's nationality is often the result of a well-founded fear of persecution, meaning that refugees are considered *de facto* stateless. It is important to note, however, that not all *de facto* stateless persons are refugees. *See id.*

Causes of Statelessness

There are a variety of reasons why a person may be or become stateless. The most commonly discussed causes of statelessness are: State succession, conflict of laws and other technical or administrative matters, discrimination against certain racial or ethnic minority groups, and gender-based discrimination in nationality laws. *See, e.g.,* UNHCR & Asylum

Aid, *Mapping Statelessness in the United Kingdom* (2011), at 23-24.

STATE SUCCESSION

The dissolution of the former Soviet Union and Yugoslav Federation as well as post-colonial State formation in Africa and Asia have contributed to large populations of stateless persons in Africa, Eastern Europe, and Asia. *See id* at 23. For example, when Estonia regained its independence in 1991, following over 40 years of Soviet occupation, the government restricted the automatic conferral of Estonian citizenship to persons who had been Estonian citizens prior to the Soviet occupation and their descendants. *See* Refugees International, *Left Behind: Stateless Russians Search for Equality in Estonia* (2004), at 1. As a result of this policy, “hundreds of thousands” of ethnic Russians living in Estonia – many of whom had been forcibly relocated to Estonia during the occupation – were left stateless. *See id.* Although the Estonian government has taken steps to encourage such individuals to apply for Estonian or Russian

citizenship, the naturalization requirements for Estonian citizenship, such as the language requirement and civics exam, remain challenging for many ethnic Russians who live isolated from the ethnic Estonian population. *See id.*

The risk of statelessness in cases of State succession has led to the adoption of legal protections that specifically address nationality and State succession. **Article 10(1)** of the 1961 Statelessness Convention requires any treaty contracted between States concerning the transfer of territory to include specific provisions addressing the nationality of the citizens of the territory at issue. *See* 1961 Statelessness Convention, art. 10(1). In the absence of such provisions, a State is required to confer its nationality on residents of the transferred territory if they would otherwise become stateless. *See* 1961 Convention, art. 10(2). The Council of Europe has also drafted a Convention on the Avoidance of Statelessness in Relation to State Succession.

A future issue for the international community is the status of nationals of "sinking States" – that is, States that are in danger of physically disappearing as the result of climate change. This issue is without precedent and is currently being studied by relevant stakeholders within the international community. *See, e.g.,* Jane McAdam, *'Disappearing States', Statelessness and the Boundaries of International Law* (2010).

CONFLICT OF LAWS AND ADMINISTRATIVE PRACTICES

Statelessness cases in this context are the result of a variety of legal and administrative factors. The fact that some States apply *jus soli* while others apply *jus sanguinis* in their citizenship laws is one such factor. A person may be at risk of statelessness if she is born in a State that applies *jus sanguinis* while her parents were born in a State that applies *jus soli*, leaving the person ineligible for citizenship in both States due to conflicting laws. *See* UNHCR & Asylum Aid, *Mapping Statelessness in the United Kingdom*, at 23. Additionally, some

States state in their nationality laws that a citizen will automatically lose their nationality after a specified period of absence from the State. *See id.* Because of the risk of statelessness these laws create, the 1961 Statelessness Convention provides that, with some limited exceptions, a person shall not be deprived of their nationality unless she has acquired or possesses another nationality. *See* 1961 Statelessness Convention, arts. 6-8.

Lack of registration at birth, which is a serious issue in developing countries, also places children at risk of statelessness. Although not having a birth certificate does not automatically make a child stateless, children who have no legal proof of where they were born, the identity of their parents, or the birthplace of their parents, are at a heightened risk of statelessness. UNHCR & Asylum Aid, *Mapping Statelessness in the United Kingdom*, at 23. The importance of birth registration can be seen in various international and regional human rights instruments that guarantee the right of every child to be registered at birth. *See* International Covenant on Civil

and Political Rights, art. 24(2); Convention on the Rights of the Child, art. 7(1); African Charter on the Rights and Welfare of the Child, art. 6(2).

DISCRIMINATION AGAINST MINORITY GROUPS

In some cases, minority groups have either been prevented from acquiring the nationality of the country in which they reside or have been arbitrarily deprived of their nationality. A contemporary example of this problem can be seen in Sudan, where the government has been urged to ensure that Sudanese persons of southern origin are not stripped of their Sudanese citizenship if they do not become citizens of the new country of South Sudan. Similar concerns of statelessness have arisen in Burma, Syria, Iraq, and Kuwait in recent decades.

In 1982, the Rohingya, an ethnic minority group of Burma, were stripped of their Burmese citizenship. *See* *Refugees*

International, Bangladesh: The Silent Crisis (2011). The Rohingya still residing in Burma have been consistently denied access to citizenship over the last several decades and have been subjected to violence as well as restrictions on their rights to marry and freedom of movement, among other severe human rights abuses. *See id.*

The Kurdish populations of Syria and Iraq have experienced a similar fate. In 1962, the Syrian government issued Decree No. 93 which announced a one-day census in the al-Hasakeh province, home to a large population of Syrian Kurds. *See* Human Rights Watch, *Syria: The Silenced Kurds* (1996). Residents were required to prove residence in Syria since 1945 or lose citizenship but residents were given insufficient notice of the census. *See id.* As a result, 120,000 Kurds were denaturalized, a figure accounting for 20 percent of Syria's Kurdish population at the time. *See id.* In 1980, Falil Kurds in Iraq were stripped of their citizenship following a decree issued

by then-President Saddam Hussein. *See* UNHCR & Asylum Aid, *Mapping Statelessness in The United Kingdom*, at 24.

In other cases, certain ethnic groups within a country were deemed ineligible for citizenship following that country's acquisition of independence. In Kuwait, Article 1 of the 1959 Nationality Act states that any person or their descendants who settled in Kuwait prior to 1920 and maintained their residence there until enactment of the law is a Kuwaiti national. *See* Nationality Law, art. 1 (1959) (Kuwait). Through the application of this law, about one-third of Kuwait's population at the time of its independence was classified as Bidoon Jinsiya (without nationality). *See* Sebastian Kohn, *Stateless in Kuwait: Who Are the Bidoon?*, Open Society Foundations, 24 March 2011. It should be noted that some were in fact eligible for citizenship, but did not register during the relevant period because they misunderstood the importance of acquiring Kuwaiti citizenship. *See id.* Since the 1980s, the Bidoon in Kuwait have been treated, as illegal residents and have experienced discrimination in the employment and education sectors as well

as in their ability to obtain legal documentation, including birth and marriage certificates. *See* Open Society Institute & Refugees International, *Without Citizenship: Statelessness, Discrimination and Repression in Kuwait* (20011), at 6-8. While the government has recently issued decrees allowing small numbers of Bidoon to naturalize, the majority of Bidoon remain stateless. *See id.*

Palestinians throughout the Middle East and North Africa have also been regularly denied access to citizenship. The 1965 Protocol for the Treatment of Palestinians in Arab States (Casablanca Protocol) provides that Arab States hosting Palestinian refugees are to treat them the same as citizens, while Palestinians "retain[] their Palestinian nationality." Consequently, Palestinians cannot attain nationality in many States in North Africa and the Middle East. *See* Laura van Waas, *The Situation of Stateless Persons in the Middle East and North Africa* (2010), at 42. The exception is Jordan, which granted citizenship to a large number of Palestinians through Article 3(2) of its Law No. 6 of 1954 on Nationality (last

amended 1987). However, the Jordanian government has since restricted access to citizenship for Palestinians living within its borders. Between 2004 and 2008, the Jordanian government denaturalized more than 2,700 Jordanians of Palestinian origin and hundreds of thousands more were at risk of being denaturalized. *See* Human Rights Watch, *Stateless Again: Palestinian-Origin Jordanians Deprived of Their Nationality* (2010), at 1, 26.

Israel's nationality laws grant citizenship to Palestinians residing in Israel on the basis of residency within the State, though the International Crisis Group has reported that Arab-Israelis experience discrimination and marginalization. *See* Nationality Law, 5712-1952, (Israel); International Crisis Group, *Back to Basics: Israel's Arab Minority and the Israeli-Palestinian Conflict* (2012), at ii. In 2006, the controversial 2003 Nationality and Entry into Israel Law (Temporary Order), which, among other provisions, bars the Palestinian spouses of Israelis from access to citizenship and residency in Israel, was upheld by the High

Court of Justice in 2006. *See* *High Court Rejects Petition against Citizenship Law*, Jerusalem Post, 11 January 2012.

Statelessness has had a profound effect on the lives of Palestinians. Unable to acquire citizenship and exercise the rights associated with it, many Palestinians live in poverty in refugee camps. The situation of Palestinians in Lebanon, where Lebanese law places serious restrictions on their ability to work and own property, is considered particularly dire. *See, e.g.,* Human Rights Watch, *World Report 2011: Lebanon* (2011). Meanwhile, the Palestinian populations of Kuwait and Libya were forcibly expelled in 1991 and 1995 respectively. *See, e.g.,* Abbas Shiblak, Stateless Palestinians, 26 Forced Migration Review 8 (2006).

GENDER-BASED DISCRIMINATION

In a large number of States that apply *jus sanguinis*, only men are able to pass their nationality on to their children. *See, e.g.,*

Decree No. 15 on Lebanese Nationality, art. 1 (1925) (Lebanon). Although many of these States provide that children may acquire the nationality of their mother when the father is unknown or paternity has not been legally established, the children of citizen mothers and foreign fathers are at risk of statelessness if the father is stateless or is unwilling to complete the necessary steps to apply for citizenship for his child within the father's own country. *See, e.g.,* Nationality Law, art. 3 (1959) (Kuwait).

Article 9 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) recognizes the right of women to pass their nationality on to their children, as well as to their husbands. *See* CEDAW, art. 9. This provision has been weakened, however, by a significant number of States that have made reservations to this particular article. *See* UN Women, Declarations, Reservations and Objections to CEDAW (listing reservations to specific articles by country). Further, this right is restricted within Africa's regional human rights system. **Article 6(h)** of the Protocol to the African Charter on Human and

Peoples' Rights on the Rights of the Women in Africa (Maputo Protocol) provides that women have equal rights with men to pass their nationality on to their children "except where this is contrary to a provision in national legislation or is contrary to national security interests." This is problematic because a number of countries in Africa have clauses in their national legislation that only permit men to pass their nationality on to their children. *See, e.g.,* Law No. 61-70 of 7 March 1961 Determining Senegalese Nationality, art. 5 (1961) (Senegal) (in French).

In recent years, some States have taken steps to grant women equal rights with respect to nationality. In 2011, Tunisia's interim government announced it was withdrawing all of its reservations to CEDAW, which included a reservation to Article 9. *See Tunisia: Government Lifts Restrictions on Women's Rights Treaty*, Human Rights Watch, 6 September 2011. In 2007, Morocco amended its nationality laws to enable women married to foreigners to pass their nationality on to their children. *See* Laura van Waas, *The Situation of Stateless Persons in the*

Middle East and North Africa (2010), at 14. Egypt adopted similar measures in 2004 when it amended its Nationality Act to entitle children born to Egyptian mothers and foreign fathers to Egyptian citizenship. *See id.* at 13. However, in Egypt, women married to Palestinian men were still prevented from passing their nationality on to their children. *See id.* In May 2011, however, the Ministry of the Interior announced that these children would also be eligible for citizenship. *See* Women's Learning Partnership, *Women's Rights and the Arab Spring: Middle East/North Africa Overview and Fact Sheet*.

Consequences of Statelessness

Stateless persons live in an extremely precarious and vulnerable situation. Although humans have rights under international human rights law, individuals without citizenship lack the legal recognition necessary to exercise many rights, and have no expectation of diplomatic protection from any government. Statelessness affects a person's ability to enjoy

fundamental privileges such as marriage, wage-earning employment, education, health, and freedom of movement. Consequently, "poverty becomes an integral part of stateless life." *See* UNHCR & Asylum Aid, *Mapping Statelessness in the United Kingdom*, at 25. Stateless persons are also particularly vulnerable to expulsion from their country of habitual residence because they lack a legal status and are at risk of prolonged detention, particularly in the context of pre-deportation detention, because there is often no State that will admit them. *See* Equal Rights Trust, The Protection of Stateless Persons in Detention under International Law (Working Paper, 2009), at 36–37.

ENFORCEMENT

Enforcement at the International Level

The United Nations High Commissioner for Refugees' (UNHCR) mandate holder has a duty to protect stateless persons, in addition to the duty to protect and assist refugees. *See* UNHCR, How UNHCR Helps Stateless People. This is in accordance with a series of General Assembly resolutions delegating the UNHCR as the UN body responsible for assisting stateless persons seeking benefits under the Statelessness Conventions. *See* UN General Assembly, Resolution 3274 (XXIX), *Question of the establishment, in accordance with the Convention on the Reduction of Statelessness, of a body to which persons claiming the benefit of the Convention may apply*, UN Doc. A/RES/3274, 10 December 1974; UN General Assembly, Resolution 49/169, *Office of the United Nations High Commissioner for Refugees*, UN Doc. A/RES/49/169, 23 December 1994.

UNHCR's duties with regard to statelessness include identifying cases of statelessness, reducing statelessness, preventing statelessness, and providing assistance to stateless persons. *See id.* During the 50th anniversary year of the 1961

Statelessness Convention, the UNHCR led a campaign to increase the protection of stateless persons by encouraging more countries to ratify the two Statelessness Conventions and by holding a series of expert meetings on their key provisions. As a result of UNHCR's efforts, 17 more countries acceded to the 1954 Statelessness Convention and/or the 1961 Statelessness Convention between 2011 and 2012. *See* UNHCR, UN Conventions on Statelessness. The UNHCR also drew from the summary conclusions of its expert meetings to draft a series of guidelines on issues such as the definition of statelessness in Article 1(1) of the 1954 Statelessness Convention, statelessness identification procedures, and the status of stateless persons at the national level.

Enforcement at the National Level

The 1954 Statelessness Convention does not include procedures for States to use in identifying stateless persons on their territory. Thus, in addition to the low number of States that

have ratified the Statelessness Conventions, a major factor limiting protection of stateless persons at the national level is the general lack of statelessness identification procedures. *See, e.g.,* UNHCR & Asylum Aid, *Mapping Statelessness in the United Kingdom*, at 64. Statelessness identification procedures are necessary because only once an individual has been recognized as being stateless is he or she entitled to the protections of the 1954 Statelessness Convention and the relevant national legislation incorporating those protections. In the absence of statelessness status determination procedures, many stateless individuals apply for asylum in an attempt to access some form of legal protection. *See id.* at 39. This is problematic, as many stateless persons do not have a well-founded fear of persecution and consequently do not qualify as refugees. Ineligible for protection as refugees and without access to recognition as a stateless person, these individuals often find themselves in legal limbo. *See id.* at 59.

A lack of statelessness determination procedures does not necessarily mean a lack of protection for stateless persons,

however. Some States without formal statelessness determination procedures offer stateless persons a form of subsidiary protection. *See, e.g.,* Gábor Gyulai, Hungarian Helsinki Committee, *Forgotten Without Reason: Protection of Non-Refugee Stateless Persons in Central Europe*, at 3. This generally consists of a renewable residence permit and travel documents. *See id.* at 24, 40. Persons who qualify for subsidiary protection may also have access to education, employment, and social services, although such access is often subject to the same restrictions that are applied to foreign nationals within the State's territory and in some cases amounts to a lesser form of protection than that granted to refugees. *See id.* at 25.

Some States, even those not party to the 1961 Statelessness Convention, have implemented national measures to reducing statelessness. A large number of States consider abandoned children found within their territory to be nationals absent evidence to the contrary. *See, e.g.*, Law of 15 February 1962 on Polish Citizenship, art. 5 (1962) (Poland). Some States provide

access to nationality to children born on their territory to stateless parents. *See, e.g., id*. A number of States also provide more lenient naturalization requirements for stateless persons. For example, Hungary reduces its continuous residence requirement from eight years to five years for stateless persons. *See* Gábor Gyulai, Hungarian Helsinki Committee, *Forgotten Without Reason: Protection of Non-Refugee Stateless Persons in Central Europe*, at 30.

SELECTED CASELAW

Access to Nationality

- The European Convention on Human Rights does not address the right to a nationality. Nonetheless, the European Court of Human Rights (ECtHR) has recognized that in some cases, lack of access to a nationality or the removal of stateless persons from a

nation may infringe on an individual's right to respect for his/her private or family life as recognized in Article 8 of the European Convention. In Kurić and Others v. Slovenia, citizens of the Socialist Federal Republic of Yugoslavia were "erased" from Slovenia's registry of permanent residents and rendered stateless when Slovenia gained its independence and they failed to register as permanent residents or citizens during a prescribed period. *See* ECtHR, *Kurić and Others v. Slovenia* [GC], no. 26828/06, Judgment of 26 June 2012, paras. 31–33. The Court held that Slovenia violated the applicants' rights under Article 8 because the registration procedures were arbitrary and unlawful, and the purpose of registering – particularly when the applicants were already included in a registry of permanent residents – was not adequately explained. *See id.* at paras. 360-62; c*f.* ECtHR, *Karassev and Family v. Finland* (dec.), no. 31414/96, ECHR 1999-II, Judgment of 12 January 1999 (acknowledging the Article 8 right, but finding the case inadmissible where Finland's determination that the applicant was a Russian citizen was based on a legitimate interpretation of Russian law, despite conflicting reports on his citizenship from the Russian consulate, and where the applicant and his family were eligible for Finnish residency and under no risk of deportation).

- The African Charter on the Rights and Welfare of the Child (African Children's Charter) does explicitly recognize the right to a nationality. *See* African Children's Charter, art. 6. In one case, the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) found that Kenya had violated the rights of children of Nubian descent under the African Children's Charter. *See* ACERWC, *Institute for Human Rights and Development in Africa and the Open Society Justice Initiative (on Behalf of Children of Nubian Descent in Kenya) v. Kenya*, Communication No. 002/Com/002/2009, Judgment of 22 March 2011, para. 69. Many children of Nubian descent in Kenya had been left stateless when they were neither registered nor given access to Kenyan citizenship upon being born in Kenya, thus violating their right to a nationality. *See id.* at paras. 4, 40, 69. The Committee also found that the rigorous vetting process Nubian children were required to undergo to obtain identity documents amounted to discriminatory treatment for which there was no justification. *See id.* at paras. 43, 55-56. Finally, the Committee held that the consequences of statelessness, namely limited access to education, employment, and health services, also constituted a violation of the children's

rights under the African Children's Charter. *See id.* at paras. 61-62.

Detention and Removal of Stateless Persons

- In Al-Kateb v. Godwin, the High Court of Australia upheld the indefinite detention of a stateless Palestinian from Kuwait. *See Al-Kateb v. Godwin* [2004] HCA 37, paras. 74–75 (Australia). The High Court held that indefinite detention of an unlawful non-citizen subject to removal from Australia was permitted under the Migration Act and that such detention did not violate Article III of the Australian Constitution. *See id.* The decision was met with strong criticism and resulted in the issuance of Bridging Visas to individuals who, like Al-Kateb, have no country willing to accept them. *See* Equal Rights Trust, *The Protection of Stateless Persons in Detention under International Law* (Working Paper, 2009), at 38.
- The U.S. Supreme Court, by contrast, has taken a different approach. In *Zadvydas v. Davis*, the Supreme Court held that in order to hold a non-citizen in detention pending removal beyond six months, the

United States must show removal is likely in the foreseeable future or special circumstances warrant continued detention. *See* Zadvydas v. Davis, 533 U.S. 678, 701–02 (2001). *Zadvydas*concerned two former permanent residents unable to be returned to their country of origin – Zadvydas who was of Lithuanian descent but was *de jure* stateless and Kim who was a Cambodian national but whom the Cambodian government refused to re-admit. *See id.* at 784–86. The Supreme Court later held in *Clark v. Martinez* that the reasonable time limit also applied to inadmissible aliens. *See* Clark v. Martinez, 543 U.S. 371, 386 (2005).

- In *Kelzani v. Secretary of State for the Home Department*, the Immigration Appellate Authority of the United Kingdom held that the deportation of Kelzani, a stateless Palestinian who had violated the terms of his visa by engaging in unauthorized employment and subsequently overstayed his visa, did not violate Article 31 of the 1954 Statelessness Convention because “the control of immigration is necessary for maintenance of the public order” and his deportation order had been issued in accordance with the principles of due process. *See Kelzani v. Secretary of State for the Home Department*, [1978] Imm AR 193 (United Kingdom); UNHCR & Asylum Access, *Mapping Statelessness in the United Kingdom*, at 67. The tribunal also held that it was irrelevant that the

travel document that had been issued to Kelzani by the Egyptian government did not entitle Kelzani to permanent residence in Egypt, as there was evidence that he would be admitted to Egypt and have access to employment there. *See id.* The case has been widely criticized and some speculate that if a similar case were to be brought today it would come out differently. *See* UNHCR & Asylum Aid, *Mapping Statelessness in the United Kingdom*, at 67.

Arbitrary Deprivation of Nationality

- In 2005, the Inter-American Court of Human Rights held that the Dominican Republic violated multiple articles of the American Convention on Human Rightswhen it refused to issue birth certificates to children born in the Dominican Republic to parents of Haitian descent. *See* I/A Court H.R., *Girls Yean and Bosico v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005, Series C No. 130, para. 260. The Inter-American Court held that the Dominican Republic's interpretation of "in transit" in its migration and citizenship laws excluded ethnic Haitians born in

the Dominican Republic from acquiring citizenship and that its treatment of ethnic Haitians in the Dominican Republic was arbitrary and discriminatory. *See id.* at para. 174. The Inter-American Court also found a violation of the children's right to education, since the girls were unable to attend school as a result of not being issued birth certificates. *See id.* at paras. 185–87.

- In *John K. Modise v. Botswana*, the African Commission on Human and Peoples' Rights held that Modise was a citizen of Botswana by birth, as he had been born in South Africa to a father who was a British Protected Person and was therefore considered a citizen of Botswana following its independence. *See* ACommHPR, *John K. Modise v. Botswana*, Communication No. 97/93, Merits Decision, 28th Ordinary Session, 6 November 2000, para. 97. The Commission held that Botswana had violated Modise's rights under the African Charter on Human and Peoples' Rights by not recognizing him as a citizen and by deporting him from Botswana, which resulted in his living in poverty. *See id.* at para. 92. The Commission held that Modise's living conditions while he was stateless amounted to a violation of his right to respect for dignity. *See id.* The Commission further noted that Botswana's grant of registered citizenship to Modise was inadequate because registered citizens

did not have the same rights as citizens by birth. *See id.* at paras. 83, 96–97.

Equal Access to Nationality

- In an advisory opinion, the Inter-American Court of Human Rights found that the proposed constitutional amendments granting preferential naturalization requirements to women married to Costa Rican men but not to men married to Costa Rican women would amount to discrimination under the American Convention on Human Rights. *See* I/A Court H.R., *Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica*,Advisory Opinion OC-4/84, 19 January 1984, paras. 64–67. The Court also held that the provisions giving preferential treatment to non-citizens from Central American or other Spanish-speaking cultures did not amount to discrimination. *See id.* at paras. 60–61, 68. A proposed revision requiring foreign women who lost their nationality upon marriage to a Costa Rican man to wait two years before they could acquire Costa Rican nationality did not violate the right to a nationality under Article 20 of the Convention because

it did not amount to an arbitrary deprivation of nationality on the part of Costa Rica, but the Court cautioned that some of the women affected by the provision could be left stateless during the two-year period. *See id.* at paras. 46, 48, 68.

- At the domestic level, the Court of Appeal of Botswana held that the Citizenship Act of 1984, which granted citizenship to the children of a Botswanan father and to children born out of wedlock to a Botswanan mother, violated the Constitutional guarantees of freedom from discrimination and freedom of movement and liberty since the children of the plaintiff, a Botswanan woman married to a foreign national, could face removal from Botswana as non-citizens and because the law discouraged marriage between citizen women and non-citizen men. *See* *Attorney-General v. Dow*(2001) AHRLR 99 (BwCA 1992), paras. 124, 130, 134.

Effective Nationality

- In 1955, the International Court of Justice reviewed the deportation and seizure of property by the Guatemalan government of Nottebohm, a former

German national who naturalized as a citizen of Liechtenstein shortly after the beginning of World War II. *See* *Nottebohm Case (Liechtenstein v. Guatemala)*, Judgment, 6 April 1955, ICJ Reports 1955, at 6–7. The ICJ held that Liechtenstein's claim on behalf of Nottebohm was inadmissible because Nottebohm had no real ties to Liechtenstein since he did not reside there, conducted business in Guatemala, and appeared to only have become a citizen of Liechtenstein so that he could be listed as a citizen of a neutral country during the war. *See id.* at 25–26. Although Nottebohm does not specifically address statelessness, it has frequently been cited in statelessness studies because of its discussion of a "real and effective nationality." *See id.* at 22, 24.

ADDITIONAL RESOURCES

- Africa Governance Monitoring and Advocacy Project & Open Society Justice Initiative, *Citizenship Law in Africa: A Comparative Study* (2010).
- Carol A. Batchelor, *Statelessness and the Problem of Resolving Nationality Status*,10 Int'l. J. Refugee L. 156 (1998).
- Equal Rights Trust, *Guidelines to Protect Stateless Persons from Arbitrary Detention* (2012).
- Institute on Statelessness and Inclusion, *The World's Stateless Children* (2017).
- Laura van Waas, *Nationality Matters*, 29 School of Human Rights Series (2008).
- Open Society Justice Initiativeworks on statelessness and has brought several cases before regional human rights bodies on behalf of stateless persons.
- Refugees International is a human rights organization that works on statelessness issues.
- UNHCR, Climate Change and Statelessness: An Overview (2009).
- UNHCR, Nationality & Statelessness: A Handbook for Parliamentarians (2005).

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